IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.701 OF 2006

1. Kisan @ Pilaji Gangaram Khatale,
2. Nandu Kisan @ Pilaji Khatale,
3. Sitaram Kisan @ Pilaji Khatale,
4. Macchindra Bahiru Khatale,
5. Lankabai sitaram Khatale,

All resident of Karhole, Tal.Igatpuri,
District-Nashik, .. Petitioners
(Original Accused)

Vs

The State of Maharashtra, .. Respondent.

Mr S.M.Gorwadkar, for the petitioners.
Mr. A.S.Shitole, APP for the respondent-State.

2. **CRIMINAL APPLICATION NO.2407 OF 2006**

Vijay Kantilal Firodia,
at & Post Jambal, Tal.Shirar,
Dist: Pune. .. Petitioner

Vs

1. The State of Maharashtra
2. Raju Kantilal Firodia,
3. Ratnmala Kantilal Firodia,
4. Kantilal Firodia, .. Respondents.

Mrs A.A.Agarwal, for the petitioner.
Mr R.Y.Mirza, APP for the respondent-State.

CORAM : D.B.BHOSALE, J.

DATED : 8th August, 2006

ORAL JUDGMENT:

1. These two petitions challenge the similar orders passed by the trial Courts, framing an alternative charge under section 306 of IPC in

addition to the charge under section 498-A and 302 r/w 34 of IPC. Insofar as criminal writ petition no.701 of 2006 is concerned, it appears that the prosecution had also prayed for framing of an alternative charge under section 304-B along with 306 of IPC. However, the Court framed charge only under section 306 read with 34 of IPC. The impugned orders in both these matters were passed on the applications filed by the prosecution. Since the question raised in these petitions is common and the facts and circumstances against which it is raised are similar, they are being disposed of by common judgment.

2. The only question that was raised by the learned counsel appearing for the petitioners, in both these petitions was that whether the accused could be tried for the offences both under sections 302 and 306 of IPC, which are distinct offences having altogether different ingredients and, whether that would cause any prejudice to the accused in propunding his defence. In other words, whether charge under section 306 could be framed in addition to the charge under section 302. According to the learned counsel for the petitioners, the prosecution has to take a positive stand whether it is a case of murder or suicide. The prosecution cannot say that the accused has murdered the deceased and if the deceased has committed suicide

the accused has abetted commission of suicide. Both the learned counsel for the petitioners placed heavy reliance upon the Judgment of Delhi High Court in Jatinder Kumar and Others Vs. State (Delhi Admn.) Delhi 1992 Cri.L.J.1482. Reliance was also placed on the Judgment of the Apex Court in Sangaraboina Sreenu Vs State of A.P., AIR 1997 Supreme Court 3233 to contend that the offence under section 306 of IPC cannot be stated to be a minor offence in relation to an offence under section 302 of IPC within the meaning of Section 222 of Cr.P.C. The basic constituent of an offence under section 302 of IPC is homicidal death, whereas of section 306 of IPC is suicidal death and abetment thereof. It was further submitted that if both the charges are framed and the accused is made to face trial, that would cause serious prejudice inasmuch as it would not be possible to propound a particular defence in the case.

3. On the other hand, a heavy reliance was placed upon the Judgment of the Apex Court in Dalbir Singh Vs. State of U.P., 2004 (Cri) 503 to contend that if the Court has sufficient power to convict the accused under section 306 of IPC in a case where the accused was charged and tried only of the offence punishable under sections 302, 498-A read with section 34 of IPC, there should not be any difficulty in framing an

alternative charge under section 306 in a case of bride burning or where the allegations attracting an offence under section 498-A of IPC are sufficient to drive a person to commit suicide.

4. It is true that both the offences under sections 302 and 306 of IPC are distinct and are having altogether different ingredients. It is equally true that the basic constituent of an offence under section 302 of IPC is ‘homicidal death’ whereas under section 306 of IPC is ‘suicidal death’. The accused, in any case, cannot be said to have committed both the offences. It could be either murder or suicide and if it is suicide the accused could be charged of an offence under section 306 of IPC for having abetted the commission of suicide.

5. In Dalbir Singh (supra), the question that fell for the consideration of the Supreme Court, was whether in a given case is it possible to convict the accused under section 306 of IPC if a charge for the said offence has not been framed against him. This question arose in the light of the conflicting opinions expressed in two cases viz. **Lakhjit Singh and Anr Vs State of Punjab, 1994 Supp.(1) SCC 173 and Sangaraboina Sreenu Vs State of AP** (supra). In **Lakhjit Singh** (supra), the accused were charged under

section 302 of IPC and were convicted and sentenced for the said offence both by the trial Court and also by the High Court. The Supreme Court in appeal came to the conclusion that the charge under section 302 of IPC was not established. The Court then examined the question whether the accused could be convicted under section 306 of IPC and in that connection considered the effect of non-framing of charge for the said offence. It was held that having regard to the evidence adduced by the prosecution, the cross-examination of the witnesses as well as the answers given under section 313 of Cr P C it was established that the accused had enough notice of the allegations which could form the basis for conviction under section 306 of IPC.

. Whereas in **Sangaraboina Sreenu** (supra) the accused was convicted under section 302 on the charge that he poured kerosene on the body of his wife and set her ablaze but the High Court set aside the said conviction and convicted the accused under section 306 of IPC. The Supreme Court allowed the appeal and in paragraph 2 thereof held thus:

> "This appeal must succeed for the simple reason that having acquitted the appellant of the charge under Section

> 302 IPC which was the only charge framed against him - the High Court could not have convicted him of the offence under Section 306 IPC. It is true that Section 222 Cr P C entitles a Court to convict a person of an offence which is minor in comparison to the one for which he is tried but Section 306 IPC cannot be said to be a minor offence in relation to an offence under Section 302 IPC within the meaning of Section 222 Cr.P.C for the two offences are of distinct and different categories. While the basic constituent of an offence under Section 302 IPC is homicidal death those of Section 306 I.P.C. are suicidal death and abetment thereof."

6. While considering both these Judgments the Supreme Court in **Dalbir Singh** (supra) considered the provisions of Section 222 and section 464 of Cr.P.C and upheld the view taken in **Lakhjit Singh** (supra) and while so doing held that though sections 464 of Cr.P.C had not been specifically referred to but the Court altered the conviction from sections 302 to 306 of IPC having regard to the principle underlying in the said Section. It would be advantageous to reproduce paragraphs 17 and 18 in Dalbir Singh's case which read thus:-

> "17. There are a catena of decisions of this Court on the same lines and it is not necessary to burden this judgment by making reference to each one of them. Therefore, in view of Section 464 of Cr.P.C it is possible for the appellate or revisional court to convict an accused for an offence for which no charge was framed unless the Court is of the opinion that a failure of justice

would in fact occasion. In order to judge whether a failure of justice has been occasioned, it will be relevant to examine whether the accused was aware of the basic ingredients of the offence for which he is being convicted and whether the main facts sought to be established against him were explained to him clearly and whether he got a fair chance to defence himself. We are, therefore, of the opinion that Sangarabonia Sreenu (supra) was not correctly decided as it purports to lay down as a principle of law that where the accused is charged under Section 302 IPC, he cannot be convicted for the offence under Section 306 IPC.

18. The facts and circumstances of the present case may now be examined in the light of the principle discussed above. The trial Court and also the High court have recorded a clear finding and with which we are in complete agreement that the accused had started making a demand of dowry soon after marriage. Even after his father in law had given him a colour TV, a scooter and money for purchasing the flat, he did not feel satisfied and continued to harass his wife. He used to frequently taunt her that some of the items given by way of gift at the time of marriage were of poor quality and were not of his standard. He had also assaulted his wife and even his seven year old daughter on several occasions. It was in such circumstances that Vimla took the extreme step of not only setting herself on fire, but also her two daughters, one of whom was only one year old. The letter written by Vimal just before taking such an extreme step speaks volume about the treatment meted out to her by the accused. Therefore, the basic ingredients of the offence under Section 306 IPC have been established by the prosecution. These features of the prosecution case were sought to be established by the prosecution in order to substantiate the charge under Section 498-A IPC and also for showing that the accused had a

> motive to commit the crime of murder for which he was actually charged. The cross-examination of the witnesses show that every effort was made to demolish the aforesaid aspect of the prosecution case, namely, that neither any demand of dowry was made nor any gifts or presents or money was received by the accused at a subsequent stage and that Vimla had not been subjected to any kind of harassment or ill-treatment. The next question to be seen is whether the accused was confronted with the aforesaid features of the prosecution case in his statement under Section 313 Cr.P.C. His statement runs into six pages where every aspect of the prosecution case referred to above was put to him. He also gave a long written statement in accordance with section 233(2) Cr P C wherein he admitted that Vimla committed suicide. He also admitted that the scooter and colour TV were subsequently by his in-laws but came out with a plea that he had paid money and purchased the same from his in-laws. There is no aspect of the prosecution which may not have been put to him. We are, therefore, of the opinion that in view of the material on record, the conviction under Section 306 IPC can safely be recorded and the same would not result in failure of justice in any manner. The record shows that the accused was taken into custody on 29.3.1991 and was released from jail after the decision of the High Court on 20.3.1997 and thus he has undergone nearly six years of imprisonment. In our opinion, the period already undergone (as undertrial and after conviction) would meet the ends of justice."

7. It is thus clear that in a case where the accused are charged of the offence under section 498-A and section 302 there should be no difficulty for the Court to convict the accused if the basic ingredients of the offence under section 306 of IPC are established by the

prosecution even without framing a charge under that section. What is material and relevant, is that the prosecution should establish that the accused had enough notice of the allegations which could form the basis for conviction under section 306 of IPC. In a bride burning case there could be or could not be any eye-witness and if there is no direct evidence the Court would have to base the order of conviction either under section 302 or under section 306 of IPC on the basis of circumstantial evidence. Motive for committing murder and basic ingredients of the offence under section 306 of IPC in such cases could be one and the same. In both the cases the accused would make every effort to disprove the case of the prosecution under section 498A, namely, that neither any demand of dowry was made nor any gifts or presents or money was received by the accused at a subsequent stage or that he subjected the deceased to cruelty for the same or for any other reason. In other words, the accused would try to disprove the motive if a charge is under section 302 and/or to establish that the ingredients of the offence under section 306 do not exist. The motive for conviction either under section 302 or the basic ingredients to establish charge under section 306 of IPC in a case of bride burning would be common and, therefore, the conviction under section 306 of IPC can safely be recorded and same would not result in failure of justice in any manner even if the charge

under section 306 was not framed and the accused was tried only under section 302 r/w 498-A of IPC.

8. The basic ingredients of the offence under section 306 in a bride burning case are hidden in the charge under section 498-A of IPC. If the intensity of illtreatment is found to be sufficient to drive or abet a person to commit suicide, it would constitute an offence under section 306 of IPC. However, severity of cruelty will have to be seen and judged from the facts of each case. In other words, if wife is subjected to cruelty to such an extent, which could drive her to commit suicide and if that is established and then even if offence under section 302 is not proved, there could be a conviction under section 306 of IPC. This being so, I find absolutely no reason and ground as to why the trial Court cannot frame alternative charge under section 306 of IPC in a case of bride burning particularly where the accused are charged under section 498-A also. As a matter of fact, if the facts and circumstances demand, the trial Court should frame alternative charge under section 306 also so as to keep the accused on guard and make him aware that there could be a conviction under section 306 even if a charge under section 302 of IPC is not established.

9. The Judgment of Delhi High Court in Jatindra Kumar’s case, I am afraid, will not apply in view of the

law laid down by the Supreme Court in **Dalvir Singh’**s case where sections 222 and 464 of Cr.P.C were also taken into consideration to hold that even if the accused are not charged under section 306, in a case of bride burning, the Court can convict the accused under that provision. Both these provisions were not referred to and considered in Jatindra Kumar’s case.

10. In Criminal Writ Petition No.701 of 2006, the accused were charged of the offence punishable under sections 302, 498-A read with 34 of IPC on the basis of the complaint lodged by Balu Namdeo Gavande, father of deceased Ranjana. Petitioner no.2 was her husband whereas petitioner no.1 was her father-in-law and other petitioners are also members of the same family. The marriage of the deceased and petitioner no.2 Nandu was solemnised some time in 2001 and the alleged incident occurred 2.1/2 years thereafter on 26.1.2004. The dead body of Ranjana was found in a well. The cause of death, according to autopsy report, was asphyxia due to drowning. The allegation against the accused, as reflected in the FIR, was that deceased Ranjana was subjected to cruelty by the accused to coerce her to fulfil their demand of Rs.10000 for lying pipe line in the agricultural land. It has been specifically stated in the FIR that she was, at times, assaulted by the accused and, there was constant taunting and demand of

the amount from her parents. Prima facie, the ingredients of the offence under section 498-A do exist in the FIR, therefore, and the charge has been framed by the trial Court under section 498-A read with 34 of IPC. There is no direct evidence so as to reach a conclusion that the accused committed an offence under section 302. It could be homicidal death or suicidal death and, therefore, I find absolutely no infirmity and error in the order by which an alternative charge of the offence punishable under section 306 read with 34 of IPC is framed. No prejudice whatsoever will be caused to the accused if an alternative charge under section 306 is also framed, keeping in view the allegations against the accused. The accused, in fact, would be on guard while facing trial to meet both the charges of which the motive and basic ingredients would be one and the same. The ill-treatment and the charge under section 498-A on the basis thereof would provide motive for committing murder and if that is not established, the charge under section 498-A may satisfy the basic ingredients to constitute an offence under section 306 of IPC particularly because the case is based on circumstantial evidence. In the circumstances, I find no reason to interfere with the impugned order and hence the writ petition is dismissed.

11. In Criminal Application No.2407 of 2006, the

accused were charged of the offence punishable under section 498-A, 302 read with 34 of IPC and the charge has already been framed. The prosecution, by their application dated 31.8.2005, prayed for framing an alternative charge under section 306 of IPC. In this case, deceased Tripti, wife of the petitioner, died on 7.6.2003. The cause of death, revealed from the autopsy report and the report of the chemical analyst of the viscera, was poisoning. Organophosphorus insecticide, phosphomindon was detected in the viscera report which caused her death. Admittedly, in this case also there is no direct evidence and the case of the prosecution is based on the circumstantial evidence. However, the allegations of ill-treatment to deceased Tripti are clearly reflected in the FIR as also the statements of other witnesses. Severity of cruelty and whether it was sufficient to drive her to commit suicide or not, could be considered only during trial if charge under section 302 is not established. I am satisfied that no prejudice whatsoever could be caused to the petitioner by framing an alternative charge under section 306 of IPC. In the result, the petition fails and is dismissed as such.

(D.B.BHOSALE,J.)

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